

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LANCE REBERGER,

Plaintiff,

v.

MICHAEL KOEHN et al.,

Defendants.

Case No. 3:15-cv-00468-MMD-VPC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On October 20, 2015, this Court issued an order denying Plaintiff's application to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant to 28 U.S.C. § 1915(g). (Dkt. no. 3 at 1-2.) The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within thirty (30) days of the date of that order, the Court would dismiss the action without prejudice. (*Id.* at 2.) The thirty-day period has now expired and Plaintiff has not paid the full filing fee of \$400.00.

Plaintiff has filed a motion to amend his complaint and has attached a proposed amended complaint. (Dkt. no. 4, 4-1.) In his amended complaint, Plaintiff attempts to establish "imminent danger of serious physical injury" by changing the dates of his amended complaint to allege that the injuries started in 2014 "through to this day." (Dkt. no. 4-1 at 1.) In reviewing the amended complaint as a whole, the Court does not find that the allegations establish imminent danger of serious physical injury because the substance of the amended complaint is challenging actions that took place in 2014. (See dkt. no. 4-1.)

1 District courts have the inherent power to control their dockets and “[i]n the
2 exercise of that power, they may impose sanctions including, where appropriate . . .
3 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
4 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
5 failure to prosecute an action, failure to obey a court order, or failure to comply with
6 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
7 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
8 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
9 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
10 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
11 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
12 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
13 for lack of prosecution and failure to comply with local rules).

14 In determining whether to dismiss an action for lack of prosecution, failure to
15 obey a court order, or failure to comply with local rules, the court must consider several
16 factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
17 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
18 favoring disposition of cases on their merits; and (5) the availability of less drastic
19 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
20 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

21 In the instant case, the Court finds that the first two factors, the public’s interest in
22 expeditiously resolving this litigation and the Court’s interest in managing the docket,
23 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
24 in favor of dismissal, since a presumption of injury arises from the occurrence of
25 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
26 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public
27 policy favoring disposition of cases on their merits — is greatly outweighed by the
28 factors in favor of dismissal discussed herein. Finally, a court’s warning to a party that


1 his failure to obey the court's order will result in dismissal satisfies the "consideration of
2 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
3 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing
4 fee within thirty (30) days expressly stated: "It is further ordered that this action will be
5 dismissed without prejudice unless Plaintiff pays the \$400.00 filing fee (which includes
6 the \$350 filing fee and the \$50 administrative fee) in full within thirty (30) days of entry of
7 this order." (Dkt. no. 3 at 2.) Thus, Plaintiff had adequate warning that dismissal would
8 result from his noncompliance with the Court's order to pay the full filing fee within thirty
9 (30) days.

10 It is therefore ordered that this action is dismissed without prejudice based on
11 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's October 20,
12 2015, order.

13 It is further ordered that the motion to amend complaint (dkt. no. 4) is denied as
14 moot.

15 It is further ordered that the Clerk of Court shall enter judgment accordingly.

16 DATED THIS 2nd day of December 2015.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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